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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,431	07/29/2003	Barry Kramer	52069/13	7841
26646	7590	03/30/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			WILKENS, JANET MARIE	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
10/630,431	KRAMER ET AL.	
Examiner	Art Unit	
Janet M. Wilkens	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) 20-24 and 33 is/are allowed.
- 6) Claim(s) 1-7,9,10,13,16-18,25-27,29,30 and 34-40 is/are rejected.
- 7) Claim(s) 8,11,12,14,15,19,28,31,32 and 41 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/21/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ |

Information Disclosure Statement

The information disclosure statement filed January 21, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For claim 36, "the surface" lacks antecedent basis, since it has not been positively claimed previously. Claiming the surface also presents a scope problem in the claims; i.e. it is now unclear whether the claimed subject matter is the dispenser alone or the dispenser on a surface/cooler.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 9, 13, 25-27, 34, and 37-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Belokin et al (5,351,841). Belokin teaches an item dispenser (Fig. 9) comprising: a pair of spatially separated side walls (105,106); a connector/suction cup (109) arranged on a first side of the dispenser configured to mount the dispenser to a surface (120); a first barrier (114 and/or 115) extending along at least a partial length of and spanning the side walls to form a channel between the side walls and the first barrier; a second barrier (122); a bottom wall (103) configured to support items arranged in the channel; an intermediary wall (102) dividing the channel, a first visual display flat panel (121) arranged on the first side of the dispenser and a second visual display (141) with a cut-out (124) on the second side of the dispenser. For method claims 25-27, since Belokin teaches the limitations found in the claims, the method steps could inherently be performed. As for the items inside the dispenser, it would be possible to place these items side by side, as shown, or to stack them one on top of the other, as desired.

Claims 1-7, 9, 10, 13, 16-18, 25, 26, 29, 30 and 34-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett. Bennett teaches an item dispenser (Fig. 1) comprising: a pair of spatially separated side walls (30); a connector/suction cup (20) arranged on a first side of the dispenser configured to mount the dispenser to a surface (cooler door 52); a first barrier (18) extending along at least a partial length of and spanning the side walls to form a channel between the side walls and the first barrier; a bottom wall (20) configured to support items arranged in the channel; an intermediary wall (22) dividing the channel, a first visual display flat panel (70; Fig. 7) arranged on

the first side of the dispenser and a second visual display flat panel (70; Fig. 8) arranged on the second side of the dispenser. First and second retainers (see Figs. 7 and 8) receive the first and second visual displays, respectively in recesses therein. For method claims 25-27, 29, and 30, since Bennett teaches the limitations found in the claims, the method steps could inherently be performed. As for the items inside the dispenser, it would be possible to place these items side by side, as shown, or to stack them one on top of the other, as desired.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belokin et al (5,351,841) in view of Belokin, Jr. et al (5,096,272). As stated above, Belokin teaches the limitations of claims 1 and 5, including a second visual display. For claim 10, Belokin fails to teach that the second visual display includes a flat board. Belokin, Jr. teaches a visual display comprising a flat board (30). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dispenser of Belokin by using a different second visual display thereon, i.e. using an attachable board with lettering thereon, such as is taught by Belokin, Jr., instead of simply the lettering presently used, since these displays are functionally equivalent and either

would work equally well on the dispenser of Belokin. The panel of Belokin, Jr. simplifying installation of the visual display, since the lettering is done beforehand.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belokin et al (5,351,841) in view of Bennett . As stated above, Belokin teaches the limitations of claims 1 and 5, including first and second visual displays on a dispenser. For claim 36, Belokin fails to teach that dispenser is on a cooler door. Bennett teaches the use of a dispenser (10) on a cooler door (52). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the dispenser of Belokin on any of a number of surfaces, including on a cooler door such as is taught by Bennett, depending on the desired need of the person employing the dispenser. Furthermore, if the dispenser of Belokin were placed on a door, the first visual display would be visible through the door when the door is in the closed position and the second visual display would be visible when the cooler door is in the open position.

Allowable Subject Matter

Claims 8, 11, 12, 14, 15, 19, 28, 31, 32 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-24 and 33 are allowed. (The allowable subject matter for claim 20 being the dispenser having side walls extending from a top point to a bottom point; a back wall spanning the side walls and having a cut-out between the side walls, said cut-

out extending from a point adjacent the bottom point to a first point in between the top point and the bottom point, the side walls projecting from a front surface of the back wall, the back edge of each side wall connected to the back wall; a front wall spanning the side walls and extending from a point adjacent the top point to a second point in between the top point and the bottom point, the front edge of each side wall connected to the front wall; a bottom wall connected between the side walls adjacent the bottom point configured to support items in the item dispenser and apply a retaining force to a supported item in the direction of the back wall; and at least one suction cup configured to connect the dispenser to a surface. The allowable subject matter for claim 33 being the dispenser having a pair of spaced apart side walls; bottom support means; connector means on a back side of the dispenser; front barrier means spanning the sidewalls adjacent the front edges thereof, said front barrier means extending along the side walls from a first point to a second point above the bottom support means between the top and bottom of the side walls, said first point closer to a top of the side walls than the second point; and back visual display means connected on the back side of the dispenser; wherein said side walls and front barrier means form a channel for storage and passage of items in the dispenser, said bottom support means for supporting items in the channel and removably retaining a bottom item.)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (703) 308-

2204. (Beginning April 7, 2005: (571) 272-6869) The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703)308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens
March 18, 2005

J.M.Wilkins
JANET M. WILKENS
PRIMARY EXAMINER
Art Unit 3637